

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 213 of 1985****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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PRAVINBHAI GOPALDAS & 1 - Appellant(s)
Versus
JAYANTILAL M BHAGAT & 2 - Defendant(s)

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Appearance :

MR MB GANDHI for Appellant(s) : 1 - 2.
 MR HB SHAH for Defendant(s) : 1 - 2.
 MR PRAFUL J BHATT for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 20/07/2006****ORAL JUDGMENT**

This Appeal is filed by the appellants original-plaintiffs challenging the judgment and

decree passed by the learned Judge, City Civil Court at Ahmedabad dated 18.10.1984 in dismissing Civil Suit No. 3429 of 1980.

2. The appellants herein original-plaintiffs filed Civil Suit No. 3429 of 1980 in the Court of City Civil Judge at Ahmedabad against the defendants for a permanent prohibitory injunction restraining the defendants No. 1 and 2 from disturbing the plaintiffs' possession of the suit stall bearing No. 15 of Rajnagar Vegetable Market, Dhalgarwad, Ahmedabad and also restrain the plaintiffs from using the suit stall and from carrying on business in the suit stall.

3. In the Suit it was pleaded by the plaintiffs that they entered into partnership through their natural guardian and father Gopaldas with deceased Ambaben, widow of Chhaganlal Sonaji by partnership deed dated 14.9.1971 and they and the deceased Ambaben

orally entrusted the management of the partnership business to the defendant No.1. It was agreed by the defendant No.1 that he was purchasing vegetables by cash and/or on credit and was selling the same by cash on the same day and was paying to the partnership firm an amount of Rs. 20 per day as lumpsum profit and the remaining amount of profit was retained by the defendant No.1. It was further averred that both the defendants No. 1 and 2 carried out management of the partnership business as per the above terms and conditions and they also used to pay an amount of Rs. 20 per day till 5.8.1980. The said Ambaben, widow of Chhaganlal Sonaji, one of the partners expired on 6.8.1980 and according to the plaintiffs as per the terms and conditions of the partnership deed they have become the absolute owners and entitled to the business of the suit stall and also to the suit stall on the death of the said Ambaben. The plaintiffs demanded amount of Rs. 20 per day from the defendants No. 1 and 2

but they did not pay the same and went on giving promises, however before 2 days of filing of the suit the defendants No. 1 and 2 refused to act according to the agreement and therefore the plaintiffs filed the said suit. Originally, the suit was filed against defendants No. 1 and 2, however during the pendency of the suit the defendant No.3 appeared before the Court and gave application below Exh.9 to join him as one of the defendants and therefore he was permitted to be joined as defendant No.3.

4. The Suit was resisted by defendants No. 1 and 2 by filing written statement. It was contended on behalf of the defendants that deceased Ambaben alone had given the suit stall in the year 1970-71 to only defendant No.2 for running business in it on payment of Rs. 150 per month and thus thus the defendant No.1 was in actual possession of the suit stall since last about 8 to 9 years but he himself paid the

licence fees of the suit stall to the APMC, Ahmedabad and was paying the licence fees as well as miscellaneous charges including cleaning charges etc., to APMC. It was also contended by the defendants that they were never informed by anybody about the alleged partnership between the deceased Ambaben and the plaintiffs. Not only that, but even the Market Committee was also not informed of the said alleged partnership. It was also submitted that one Bhogilal Laxmandas Kachhia, original-defendant No.3 instructed defendant No.2 that they should not pay any amount to anybody as he was the only heir of deceased Ambaben. Defendant No.3 also resisted the plaintiff's suit by filing written statement at Exh. 16. It was contended by him that deceased Ambaben was the sole proprietor of firm of Chhaganlal Sonaji and she was the aunt of defendant No.3 and on her death he being the only heir of deceased Ambaben is entitled to all the properties including the suit stall of deceased

Ambaben. It was further submitted that the partnership deed was a concocted document and it does not bear the thumb-mark of deceased Ambaben.

5. The learned Trial Court framed the Issues at Exh. 7. One Digneshbhai, original-plaintiff No.2 was examined vide Exh. 30 and one Shankarlal Bapuji Kachhia, and one Kantilal Ambalal Patel, both were examined by the plaintiffs vide Exhs. 32 and 37. On the other hand, defendants examined themselves at Exhs. 39, 40 and 42. The learned Trial Court assuming that execution of the suit partnership deed Exh.34 is duly proved, proceeded with the suit on that basis. The learned trial Court on appreciation of evidence and considering the partnership deed at Exh. 34 held that the plaintiffs' deceased father Gopaldas never executed the partnership agreement for and on behalf of the plaintiffs and he signed and executed the agreement only in his personal capacity and therefore it cannot be said that the

plaintiffs became partners with deceased Ambaben by the said partnership deed Exh. 34. The learned Trial Court also held that it is not proved that plaintiffs and deceased Ambaben entrusted the management of the business of the suit stall to the defendant No.1 as averred in the Plaint. It was also found by the learned Trial Court that the partnership of Chhaganlal Sonaji was not duly registered under the provisions of the Indian Partnership Act. The learned Trial Court also held that the suit partnership is a got-up document and it is invalid and was not acted upon as contended in the written statement and ultimately dismissed the suit by holding that the petitioners are not entitled to any relief.

6. I have gone through the judgment and order passed by the learned trial Court and the oral as well as documentary evidences. The contention on behalf of the plaintiffs that they

were partners of the partnership and they entered into partnership with deceased Ambaben has rightly not been believed by the learned trial Court. The partnership deed was signed by the father of the plaintiffs in his individual capacity and in the partnership deed it is not described that he was signing for and on behalf of the plaintiffs who were minors at the relevant time. The said partnership deed was also not registered as required under the Indian Partnership Act. The learned trial Court has also rightly held that as the plaintiffs were minors at the relevant time they could not have entered into any agreement and/or partnership and that the partnership even if constituted by Deed Exh.34/4 was null and void. This Court is in complete agreement with the reasonings and findings of the learned Trial Court so far as the partnership deed, Exh. 34 is concerned and the rights of the plaintiffs on the basis of the said partnership deed. The learned trial Court has

rightly dismissed the suit against all the defendants.

7. For the reasons stated above, there is no substance in the appeal and the same is accordingly dismissed. However, there will be no order as to costs.

[M.R. Shah, J.]

MR.